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THE PROBLEMS OF THE CONSTITUTIONAL CONVENTION ¹

ALBERT SHAW

Editor of the American Review of Reviews, Vice President of the
Academy of Political Science.

IT has been decided by the people of the state of New York that the time has arrived for a scrutiny of the state's organic law, with a view to such changes as may be found desirable to meet present-day needs. It is contemplated that a constitutional convention shall be elected every twenty years in this state, and that this body shall meet for some weeks or months of study and work. The result of its labors will be submitted to the people for their acceptance or rejection.

Meanwhile, there may be submitted by the legislature at any time, for acceptance or rejection at any general election, such propositions for constitutional change as may be thought desirable. In this manner, taking all the state constitutions under survey, the process of change is going on unceasingly throughout the country. Since the present constitution of 1894 was accepted by the people of New York, many amendments have been submitted, some of which have been adopted by popular vote and others rejected.

Recent New State Constitutions

Since 1894 the four new states of Utah, Oklahoma, New Mexico, and Arizona have been admitted to the Union with constitutions accepted by the President and Congress. A number of the forty-eight commonwealths have made and adopted constitutions during the past twenty years. Hundreds of amendments, furthermore, have been proposed and adopted, some of them bringing about important changes in the principles and methods of state government, while others go far

¹ Introductory address as presiding officer at the meeting of the Academy of Political Science, November 19, 1914.

toward recasting the social and institutional life of particular states.

Taking the process as a whole, it is to be praised for its freedom and elasticity, on the one hand, and for its conservatism upon the other. Thus, at the state elections held in the present month, seven commonwealths voted on the proposition to extend full suffrage to women, two of which adopted the proposal as submitted by the legislature, while five rejected it. Six states voted on the proposition to prohibit the manufacture and sale of intoxicating liquors, with the result that four adopted the proposal and two rejected it. Such changes in the organic law, expressed in a very few words, mean profound alterations in the customs and institutions of extensive regions of our country.

Simplify but Safeguard Constitutional Changes

It is generally agreed among Americans that questions at once so fundamental and so simple should be decided by the citizen body acting directly. It is also the common view that the process should be deliberate, so that no proposal of change should come before the people until it has been carefully thought out, has gained the support of an ascertained and fairly important element of the citizenship, and can be presented to the voters under circumstances which make it possible for them to give it their attention.

Two or three things, therefore, are to be borne in mind. First, that special and striking innovations are likely to come up for separate action, from time to time, and not to await the study of a convention that is called together not oftener than once in twenty years. Second, the convention will presumably be cautious in the matter of recommending a series of revolutionary changes in the governing methods and social life of the state; while, third, it will properly give much attention to the harmonious and effective working of the mechanisms of law and government. In short, it will endeavor to make the constitution fit the needs and conditions of life as it is, rather than to build a wholly new constitution, intended to

usher us into a new period of life, as hopeful and ardent reformers conceive that our modern life ought to be.

We Should Separate State from National Elections

Thus, as respects this very topic of the amending of the constitution, the convention should study carefully in order to find the best means by which to enable the people from time to time to reach intelligent conclusions under suitable conditions. Constitutional amendments ought not to be voted upon without being fully understood. They ought not to be voted upon in the moment when, for example, an exciting presidential election absorbs the minds of the citizens, stimulates party feeling, and subordinates the state and its affairs to the nation and its affairs.

The "federative balance," though delicate, is practical and of inestimable value. It means that in the very nature of the case the citizen is a nationalist as respects all that the nation can best regulate and control, while he is a state's rights' man in regard to all that can be best carried on by the particular states. Thus, in so far as possible the citizen should not be compelled to deal with national, state, and municipal questions and elections on the same day and in the same moment when he enters the voting booth.

This principle has already been recognized by the constitution-makers of the state of New York in relation to certain municipal elections. But when, two years ago this month, there occurred an exciting presidential election, the voters of New York were obliged on the same day to cast their ballots for presidential electors, members of Congress, a governor and full state ticket, together with the members of the legislature—besides which several constitutional amendments were submitted! It was impossible under those circumstances to give such attention to the governmental affairs of this great commonwealth as the conditions required.

The New York City Election as an Example

By way of contrast, thanks to a previous change in the state

constitution, there was held in 1913 a great municipal election in the metropolis of New York, involving the welfare of five million people, under circumstances which made it possible to give full and concentrated attention to the affairs of the municipal corporation. A citizens' ticket, having only slight relationship to political parties, was agreed upon and duly elected. This separation of municipal elections in cities of the first and second class, with a view to more efficient city government, had been brought before the leaders of public opinion and then submitted to the voters, with results that have been highly gratifying.

The affairs of the state, including the election of a governor, state ticket, and legislature—and, even more importantly, the election of all the members of the constitutional convention—came up for action at the polls on the third day of the present month. But it happened that on that same day the voters of the United States were engaged in the serious business of determining the party complexion of the law-making body at the seat of national government. They were electing an entire House of Representatives, and by popular vote they were filling one-third of the seats of the United States Senate. The President and the Administration had declared that the election involved the question of a vote of confidence in the national government, at a time when the most vital questions of domestic and foreign policy were under consideration.

It would seem as if the people of New York at such a time ought to have voted for United States Senator and members of Congress, and not to have dealt with state questions. The political issues involved in voting for United States Senator and state governor are widely different. Now that the legislature is relieved of the duty of choosing the United States Senator, it becomes free to devote its undivided attention to state affairs. I hold, therefore, that the constitutional convention ought seriously to consider whether the state elections, like the municipal, should not henceforth be held in the "odd" years. We shall always be electing Presidents, Senators, and Congressmen in the "even" years.

The time has come for demanding that our state govern-

ments cease to be made the footballs of national party politics. We had a long fight to convince Americans that municipal corporations could be and ought to be managed upon the strength of direct public interest in municipal life and progress, and not subjected to the ups and downs of party politics. The time has come for realizing that the functions of the states are so important that we cannot afford to have state government subordinated, in times of political excitement, to party strife and struggle relating essentially to national men and measures.

Lengthen Terms of State Officers

Thus I hold that there are certain things, involving the dignity, power, and efficiency of state government, that have to do with what may be called mere mechanism; and these things can best be worked out by the convention. There are other things, having to do with positive changes in social life and customs of the community, that can quite as well be brought forward independently, from time to time, for popular action.

In view of the need of dignifying and strengthening the state government, might it not be well to consider the holding of elections in odd years, the extension of the governor's term from two years to four (as has been done in the case of the mayor and general officers of the city of New York), and the election of assemblymen for two years instead of one and of state senators for four years instead of two, as is now the practice in almost every one of the forty-eight commonwealths.

Methods of Amendment

Since the frequent submission of amendments is, in the last analysis, a government of referendum, might there not be also some guarded plan of popular initiative? The people now have an automatic chance to elect a constitutional convention and consider amendments once in twenty years. Or the legislature may submit the question of calling a convention at any time, and it may itself submit constitutional provisions as numerous and frequently as it chooses. To these three ar-

rangements, some plan for initiative might be added, although it does not seem vitally necessary.

The important thing is to give the people a chance to take their state government seriously, to render it highly efficient, and to make it a positive agency for the accomplishment of desired ends. This being the common sentiment, one finds to-day widespread favor for the proposal to put more authority in the hands of the governor, and to hold him responsible for the administration of the various departments of the executive government. If we should elect the governor for four years, with a lieutenant governor and possibly a finance officer, allowing the governor to appoint all other heads of departments, we should have a much better system than the existing one.

The Plan of a So-called "Short Ballot" is Ripe for Action

Although I have never been able to believe that the "recall" is a very necessary thing in our state governments, I can see no reason why, with the concentration of power in the governor, and the extension of his term to four years, there might not be some provision for a recall vote at the end of two years. It is evident from recent experience that the provisions of the constitution having to do with impeachment must be revised and rendered safe. As interpreted in the case of Mr. Sulzer, the New York provisions were unlike those of the federal constitution and those of nearly every other state in the Union. I have elsewhere made it clear that in my opinion the existing provisions were misinterpreted. But I admit that there is some ambiguity; and it is imperative that the governor should be protected from the danger of being set aside at any moment by vote of a hostile assembly.

All these matters to which I have referred are associated closely with one another. They have to do with putting more strength and efficiency into the government of the state, while leaving the people free to deal with amendments to the fundamental law and with the choice of public officers—with some increase, rather than any impairment, of what may be called direct democratic action.

How to Strengthen the Legislature

While strengthening the executive for purposes of efficiency, there should be no thought that the affairs of a great political entity like the state of New York can be conducted with safety or advantage unless the most serious efforts also are made to provide arrangements conducive to high character and ability in the two branches of the legislature. The legislature of New York should be as free as any legislative body in the world from the imputation of control or undue influence by outside agencies, whether political or commercial. I make no charges against the legislature as it is; doubtless it contains many able and conscientious men. It has enacted much legislation in recent years of great usefulness and value.

But there is an impression that the sum total of the intelligence, ability, and public spirit of the state of New York does not reach its climax in the legislative body. This must be in large part because of conditions that could be remedied. It is necessary to consider whether or not the separate, individual districts in which we elect assemblymen and state senators form the best system that is now feasible. There is much to be said in their favor; but in the choice of practically half the legislature from the great metropolis of New York it is plain that this system of small districts does not give us a kind of representation at Albany that is suited to the actual conditions.

There are hundreds of measures coming up at Albany that affect the city of New York as a whole. There is no measure that affects the particular assembly district, whether on the lower East Side or in one of the outlying boroughs. A group system, where members of the legislature come from a large city, would probably give better representation.

The time will come, I am confident, when we shall elect members of the legislature from our great cities upon the plan of large districts from which a group of members are to be elected, with some system of cumulative voting or minority representation. I do not suppose that the state of New York is quite ready for such a change. But a plan ought to be found under which men of experience, who have earned some

leisure as they have reached or passed middle life, would regard it as both a duty and an honor to serve the state in either branch of the legislature. That we shall arrive at this desirable result in due time I have no doubt. Extending the terms of senators to four years, and of assemblymen to two years, and holding the elections in "odd" years—thus encouraging individual merit rather than the mere game of party politics—ought to help in some degree toward better results.

Evils of Local and Special Legislation

The people of New York have never understood how great are the advantages, on the side of good government, in those states which explicitly forbid, in their constitutions, all forms of local and special legislation. While a legislature like ours has hundreds or thousands of bills presented to it, the legislatures of certain other states—being prohibited from dealing with any measures except those of general, state-wide application—are able to give their attention during the entire session to a very few measures dealing with general topics, in addition to financial affairs. The state of New York is very complex in its form of social and industrial development, and it would be difficult wholly to abolish special and local legislation. Yet it is my firm belief that this could be accomplished almost—if not quite—completely, with inestimable advantages. At least, to the existing categories of prohibition, there should be others added by the new convention.

It will be found, for example, that a vast number of the measures occupying the legislature deal with the local affairs of New York city. If in one general act, carefully drawn, the cities of New York were given a due measure of home rule, it would be entirely feasible for New York city to create for itself a municipal government by virtue of which it could deal much more directly and efficiently with the matters which now go to Albany and are rushed through committees in the form of special bills affecting one feature or another of the city charter or the local welfare.

It is plain that the elimination of this enormous mass of local

business from the legislature would not only secure better work in the treatment of the remaining general bills, but very rapidly bring a higher order of ability and fitness into the membership of assembly and senate. Surely the convention of 1915 can at least provide for some improvement in this direction.

County Government Needs Reform

While the evils of local and special legislation would be vastly diminished at a single stroke by turning over to the large cities the details of their own government, there are still other institutions of minor administration that should be studied by the convention. For instance, the government of smaller cities and villages should be examined with a view to the adoption of clear, simple, and uniform provisions under appropriate classification and grouping. This should retain, and expressly grant, local option as between alternative forms, so that the commission plan, for example, could be adopted by a small city or a large village if it so desired.

Furthermore, it is important that the convention should recognize the need of modernizing the government and administration of counties. The least efficient and the least modern part of our administrative system, in the opinion of many authorities, is to be found in the puzzling way in which the business of the typical county is carried on in the United States. In England, they have swept away the surviving forms and traditions, and under the County Councils Act have adopted their existing businesslike organization. In the smaller divisions, corresponding to our townships, they have now the elective parish councils that show at least a capacity for finding a form of local government that is intended to meet the practical situation. We ought, in the state of New York, to devise county and town governments that would not only serve our own purposes, but would assist other states in substituting efficient machinery for the bewildering tangle and chaos of existing offices and jurisdictions.

Financial Efficiency

Not to go into statistics, I may merely call attention to the rapid increase in the financial assumptions of the state government. Since the constitutional convention of 1894, we have created a large state debt, and our current expenditures have increased several times as fast as our population. It is not to be asserted that this increase represents misgovernment or undue extravagance. It might, indeed, have been somewhat less, with even better results. But in any case it has been ordained by the people that the state shall render a number of public services that are expensive because there is an intelligent demand for a good kind of public work.

We have reached a point, therefore, where every thoughtful man knows that we ought to adopt the best kind of fiscal system that the science of administration has been able to devise in other places. This topic furnishes an example of the kind of work that can be done by a constitutional convention much better than by the plan of submitting amendments to the people on some future occasion. I do not advocate anything here as respects budget-making, or the fundamental principles of financial administration and control. It is enough to say that this subject gathers a new and pressing importance from the actual development that has taken place in the functions of the state and in the magnitude of its income and outgo, and that the convention may well consider it.

The Program of Progress and Prosperity

There are certain subjects of a very fundamental sort always demanding the attention of American statesmen. Those subjects have to do with what we may call the general welfare. The cataclysm of the French Revolution, and the more orderly revolutions by means of which our own political life has passed from medieval to modern conditions, have been chiefly concerned with the problem of extending political, economic, and social benefits to the whole mass of the people. The state of New York has undertaken certain admirable things, such as universal suffrage (which may and probably will in due time

be extended to women) ; universal education, with the plan of training all the children for citizenship and useful part in economic and social life; human conservation, embracing the ever-extending program of care for the dependent and delinquent classes; and material conservation, by which I mean the necessary regard for agriculture, the streams and waters of the state, the forests, and the other things that are of vital and permanent consequence in the life of any great community. I hold that these topics must be in the minds of the men who make up the constitutional convention; that there must be some general conception of the meaning and aim of the state; and of the underlying nature of a program of progress and prosperity.

As regards citizenship, it should be safeguarded and in every way heightened in dignity and value. It will be a comparatively simple matter for the people themselves to say whether or not they think the time has come for the extension of the franchise to women. But a wise body like the constitutional convention may do much to see that such conditions exist as will make it possible to exercise the rights and duties of citizenship in an intelligent and efficient way.

Give Equal Education to Country Children

The state having assumed so much authority in taking over from parents the educational development of children, there should be a careful scrutiny of the methods and efficiency of the system under which the state is exercising this great function—the greatest, indeed, of all its functions in the long run. In so far as possible, educational advantages under a state system ought to be equal throughout the commonwealth. But they have become highly unequal in New York, through circumstances which reflect no blame upon anybody, and yet which require careful and thorough-going remedies.

I could spend an hour in stating the case in full, but a single sentence may help to show my meaning. Half of the children of New York are in one school district, and are all equal beneficiaries of a magnificent school system for which more than

half of the wealth of the state is taxed. The other half of the children of the state are in hundreds, or perhaps thousands, of school districts, dependent largely upon the varying conditions of local taxation for their school facilities. Four times as much is spent for the education of a child in the tenement districts of New York city as for that of a child in the farm districts.

The state itself must equalize conditions which the growth and progress of municipal corporations have rendered unequal. The opportunities of city children must not be reduced, but those of country children must be greatly increased. This subject is so fundamental that it requires treatment in the organic law. There are other things having to do with agriculture, forestry, and the permanent prosperity of the great state of New York that claim careful attention. The city population has vastly outgrown that of the country, and yet in the long run the city will suffer if the rural life is allowed to decay. Good roads will help turn the tide, but there must be a vast development of schools and social institutions if New York's agriculture is to become—as it easily can be made to become—ten times as intensive and as prosperous as it is at present.

A Scientific Revision

The work of our constitutional convention should be scientific and thoughtful. This will be the easier because there has been no great clamor, no popular passion involved in its election. The members were elected, indeed, upon party tickets, but they were as a rule selected because of supposed fitness, and they will have little if any partisan motive in the work that lies before them. It is true that the advocates of one reform and of another will urge their views upon the convention. But there would seem to be no movement for any particular reform that is likely to be pressed with such eagerness or intensity as to disturb the deliberative mind of the convention in dealing in a well-proportioned way with its task as a whole.

It is an awkward thing for an aspiring and growing family to live in a cramped and ill-arranged house. Yet experience

has shown that it is possible to live quite decently for a time in a hut or a log cabin; and we know that it makes more difference *how the house is lived in* than what its architecture may be. We know that the political capacity and social character of the people are more essential than the forms of their political institutions. Yet these forms are important, and in due time, if they are not made suitable, they become seriously detrimental.

Previous Conventions

The first constitutional convention of New York met in July, 1776, at White Plains, just after the Declaration of Independence at Philadelphia. Its work was completed at Kingston, in April of the following year. This constitution of 1777 was accepted by the legislature and went into effect without popular ratification. There have been several revisions of the instrument as a whole, and many changes and amendments. But in its outward forms the main structure of the government of New York has not been much altered for a hundred and thirty-seven years. The convention of 1801, presided over by Aaron Burr, merely rearranged the number of members of the two branches of the legislature and provided for apportionment. The constitution of 1821 gave the more modern form and expression to the fundamental law, without changing its real character in most essentials. It was ratified in February 1822, with about 75,000 votes favoring, and 41,000 opposing.

After twenty-four years came the next general revision of the constitution, in 1846. Ratification followed in November, with 221,500 votes in favor, and 92,400 votes against the new instrument. The next convention met in 1867, after the Civil War; and its work was submitted in such a way as to be voted upon in large sections, or parts. It was all rejected except section 6, which, however, was an elaborate one dealing with the entire organization of the state judiciary. This impels the remark that the best legal minds of the state are likely to bring before the convention of 1915 certain important proposals having to do with making the courts more efficient and speedy in dealing with the vast number of cases that our great population and complex interests are now bringing before them.

The next convention was held in 1873, and this offered numerous amendments that were ratified in the following year, while keeping the main form of the constitution of 1846. You are comparatively familiar with the work of the convention of 1894 and the amendments that have been made from time to time since then by the submission of particular subjects.

New Spirit of State Government

The preamble of the constitution of 1821 acknowledged "with gratitude the grace and beneficence of God in permitting us to make choice of our form of government." The preamble of the constitution of 1846 was as follows: "We the people of the state of New York, grateful to Almighty God for our freedom, in order to secure its blessings do establish this constitution."

Note that we were grateful for being "permitted to choose the form of our government." In that phrase is summed up much of the history of Anglo-Saxon constitutional progress from the time of King John. In 1846 we were appreciative of "freedom and its blessings." We asked from the state the maintenance of order and justice, but beyond that, for the most part, we were sufficient unto ourselves, individualists, desiring to pursue our own ends without molestation.

The profound change that has taken place is not in the form of government, but in the constitution of society itself. We have immense growths of population, and radical re-groupings. We have ten millions of people, more than four-fifths of whom are living under urban conditions. A thousand applications of science and invention give us twentieth-century civilization with its new demands. The functions of government, rather than the forms, have become the important thing in the thoughts of most people. Freedom remains desirable, but the individual is no longer self-sufficing.

The state becomes more and more an agency for the working out of the purposes of corporate society. We lay tasks upon it to be performed for the common benefit. We demand that these things be done with efficiency. It is marvelous

that we should have been able to pass through such vast transitions, from the pioneer stage to our existing complex social life, with so little of constitutional change. The most important concrete thing that has come about is to be found in the life and the vitality of our municipal corporations. The state must to some extent reorganize itself in view of all this astounding development. It is no longer passive or negative in its functions.

Society proposes to use the organism of the state for purposes requiring not only the highest intelligence but a constant regard for social and ethical problems. This is especially true concerning the largest and the most complex of all our forty-eight commonwealths. I feel confident that the constitutional body of 1915 will endeavor, in so far as may seem feasible, to bring the organic law of the state into conformity with the needs and opportunities of our great period in the world's life. All that scientific groups, like this Academy of Political Science, can do to discuss the several subjects and problems that the convention should consider, will doubtless help to instruct public opinion at large; and it may be of some service to the members of the convention itself. It is in this spirit of scientific inquiry, rather than in the spirit of agitation, that the Academy in its sessions to-day and to-morrow will discuss a number of the more important of these constitutional topics.